

**DISTRICT OF COLUMBIA  
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA  
DEPARTMENT OF MENTAL HEALTH

Petitioner,

v.

ANGEL SQUARE, INC. and JOYCE  
OLAYINKA

Respondents

Case No.: I-02-90001

**ORDER DENYING STAY**

Respondents have filed a motion for stay pending appeal of the Final Order in this case, issued August 2, 2002. That Order requires Respondent Angel Square, Inc. to pay a fine of \$1,500 for three violations of 22 DCMR 3835.5. As set forth in *DOH v. Kennedy Center*, OAH No. I-00-11212 at 2 (Order Denying Stay, August 8, 2001), the following standard is applicable to this motion:

The Court of Appeals has held that an administrative judge considering a stay application must apply the same standard applied by the courts. That standard requires a balancing of four factors: “whether the movant [is] likely to succeed on the merits, whether denial of the stay [will] cause irreparable injury, whether granting the stay [will] harm other parties, and whether the public interest favors granting a stay.” *Kufлом v. District of Columbia Bureau of Motor Vehicle Services*, 543 A. 2d 340, 344 (D.C. 1988).

Respondents’ motion does not identify any irreparable injury that will occur if a stay is not granted, and none is apparent. Ordinarily, an order to pay money does not result in irreparable harm, because the party seeking a stay can obtain a refund if it prevails on appeal. *Kennedy Center, supra*, at 3. Nor do Respondents discuss harm to the Government or the public interest. The Government’s interest in prompt deterrence of violations of § 3835.5 will be

adversely affected if a stay is granted, and Respondent has made no showing that the public interest favors a stay.

Concerning the likelihood of success on appeal, Respondents now assert reasons why the Government's testimony should not have been believed, although they did not bring any of those reasons to my attention during the evidentiary hearing. I conclude, therefore, it is unlikely that those factual arguments will succeed on appeal, since they are unsupported by any evidence in the record.<sup>1</sup> *See* D.C. Official Code § 2-1803.03 (limiting the scope of review on appeal to the "evidence on the record"). Respondents also complain that they did not receive copies of the Government's exhibits until the day of the hearing, contrary to the Case Management Order, which required the Government to serve those documents ten days in advance of the hearing. Respondent objected to the admission of Petitioner's Exhibit ("PX") 101 on that ground, and I sustained the objection. The only document admitted into evidence was PX 103, to which Respondents did not object, and which is cumulative of the inspector's testimony in any event. It is not likely, therefore, that Respondents' evidentiary challenge will succeed on appeal.

Because none of the governing legal factors favors the grant of a stay, I will exercise the discretion granted by D.C. Official Code § 2-1802.03(g) to deny Respondents' motion.

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<sup>1</sup> Respondents allege that both the out-of-court statement of Ms. Powell and the testimony of Ms. de Veau were inaccurate in several respects. Respondents, however, introduced no evidence at the hearing to support the version of events they now put forward, and do not give any reason for their failure to do so. They also did not seek a continuance to obtain any such information.

Accordingly, it is, this \_\_\_\_\_ day of \_\_\_\_\_, 2002:

**ORDERED**, that Respondents' motion for a stay pending appeal is **DENIED**.

**FILED**            **09/19/02**

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John P. Dean  
Administrative Judge